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EVELINE HENRIETTE ROSENBERRY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

EVELINE HENRIETTE ROSENBERRY,

Plaintiff,

v.

THE CBE GROUP, INC., an Iowa
corporation,

Defendant.

Case No. C07-05165-JW-PVT

**FIRST AMENDED COMPLAINT
DEMAND FOR JURY TRIAL**

15 United States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*
Invasion of Privacy
Negligent Collection
Tort-in-se

Plaintiff, EVELINE HENRIETTE ROSENBERRY (hereinafter "Plaintiff"), based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or her attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

I. INTRODUCTION

1. This is an action for actual damages, statutory damages, attorney fees and costs brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which

1 prohibit debt collectors from engaging in abusive, deceptive and unfair practices. Plaintiff also
2 seeks actual damages and punitive damages for Defendant's invasion of her privacy by intrusion
3 upon seclusion and for Defendant's negligent collection practices.

4 2. According to 15 U.S.C. § 1692:

- 5 a. There is abundant evidence of the use of abusive, deceptive, and unfair debt
6 collection practices by many debt collectors. Abusive debt collection practices
7 contribute to the number of personal bankruptcies, to marital instability, to the loss
8 of jobs, and to invasions of individual privacy.
- 9 b. Existing laws and procedures for redressing these injuries are inadequate to protect
10 consumers.
- 11 c. Means other than misrepresentation or other abusive debt collection practices are
12 available for the effective collection of debts.
- 13 d. Abusive debt collection practices are carried on to a substantial extent in interstate
14 commerce and through means and instrumentalities of such commerce. Even where
15 abusive debt collection practices are purely intrastate in character, they nevertheless
16 directly affect interstate commerce.
- 17 e. It is the purpose of this title to eliminate abusive debt collection practices by debt
18 collectors, to insure that those debt collectors who refrain from using abusive debt
19 collection practices are not competitively disadvantaged, and to promote consistent
20 State action to protect consumers against debt collection abuses.

21 **II. JURISDICTION**

22 3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §
23 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.
24 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

25 4. This action arises out of Defendant's violations of the Fair Debt Collection
26 Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

27 **III. VENUE**

28 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in

1 that a substantial part of the events or omissions giving rise to the claim occurred in this judicial
2 district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that the
3 Defendant transacts business in this judicial district and the violations of the FDCPA complained
4 of occurred in this judicial district.

5 **IV. INTRADISTRICT ASSIGNMENT**

6 6. This lawsuit should be assigned to the San Jose Division of this Court because
7 a substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara
8 County.

9 **V. PARTIES**

10 7. Plaintiff, EVELINE HENRIETTE ROSENBERRY (hereinafter "Plaintiff"),
11 is a natural person residing in Santa Clara County, California. Plaintiff is a "consumer" within the
12 meaning of 15 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h)
13 and a "senior citizen" within the meaning of Cal. Civil Code § 1761(f).

14 8. Defendant, THE CBE GROUP, INC. (hereinafter "CBE"), is an Iowa
15 corporation engaged in the business of collecting debts in this state with its principal place of
16 business located at: 131 Tower Park, Suite 100, Waterloo, Iowa 50701-9374. CEB may be served
17 as follows: The CEB Group, Inc., c/o Thomas R. Penaluna, Registered Agent, 131 Tower Park,
18 Suite 100, Waterloo, Iowa 50701-9374. The principal business of CBE is the collection of debts
19 using the mails and telephone and CBE regularly attempts to collect debts alleged to be due another.
20 CBE is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code §
21 1788.2(c).

22 **VI. FACTUAL ALLEGATIONS**

23 9. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have incurred
24 a two financial obligations that were primarily for personal, family or household purposes, namely
25 two consumer credit card accounts issued by Citicorp Credit Services, Inc. (USA) (hereinafter "the
26 Conoco debt," "the Shell debt" or when referred to collectively "the alleged debts"). The financial
27 obligations alleged to be owed to Citicorp Credit Services, Inc. (USA) by Plaintiff are each a "debt"
28 as that term is defined by 15 U.S.C. § 1692a(5) and are each a "consumer debt" as that term is

1 defined by Cal. Civil Code § 1788.2(f).

2 10. Sometime thereafter on a date unknown to Plaintiff, the alleged debts were
3 consigned, placed or otherwise transferred to Defendant for collection from Plaintiff.

4 11. Thereafter, Defendant sent a collection letter (Exhibit "1") to Plaintiff which
5 is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

6 12. A true and accurate copy of the collection letter from Defendant to Plaintiff
7 is attached hereto, marked Exhibit "1," and by this reference is incorporated herein.

8 13. The collection letter (Exhibit "1") is dated October 21, 2006.

9 14. The collection letter (Exhibit "1") was Defendant's first written notice
10 initially addressed to Plaintiff in connection with collecting the Conoco debt.

11 15. On or about October 31, 2006, Plaintiff mailed a letter to Defendant which
12 stated: "please be advised that I dispute this debt and refuse to pay."

13 16. A true and accurate copy of Plaintiff's letter disputing the Conoco debt and
14 refusing to pay the Conoco debt is attached hereto, marked Exhibit "2," and by this reference is
15 incorporated herein.

16 17. Defendant received Plaintiff's letter disputing the Conoco debt and refusing
17 to pay the Conoco debt (Exhibit "2") on or about November 6, 2006.

18 18. A true and accurate copy of the USPS Tracking Report and Certified Mail
19 Return Receipt evidencing Defendant's receipt of Plaintiff's letter disputing the Conoco debt and
20 refusing to pay the Conoco debt (Exhibit "2") is attached hereto, marked Exhibit "3," and by this
21 reference is incorporated herein.

22 19. Thereafter, Defendant sent a collection letter (Exhibit "4") to Plaintiff which
23 is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

24 20. A true and accurate copy of the collection letter from Defendant to Plaintiff
25 is attached hereto, marked Exhibit "4," and by this reference is incorporated herein.

26 21. The collection letter (Exhibit "4") is dated November 17, 2006.

27 22. The collection letter (Exhibit "4") was Defendant's first written notice
28 initially addressed to Plaintiff in connection with collecting the Shell debt.

1 23. Thereafter, Defendant made several telephone calls to Plaintiff which were
2 each a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. §
3 1692a(2).

4 24. Defendant knew or should have known that its conduct was directed towards
5 a senior citizen.

6 25. On or about November 17, 2006, an employee of Defendant recorded the
7 following message on Plaintiff's answering machine:

8 Hey Eveline, this is Dennis. Please give me a call. My number is 866-239-6098.
9 Thanks.

10 26. On or about November 18, 2006, Defendant recorded the following automated
11 message on Plaintiff's answering machine:

12 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

13 27. On or about November 20, 2006, Defendant recorded the following automated
14 message on Plaintiff's answering machine:

15 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

16 28. On or about November 20, 2006, Defendant recorded the following automated
17 message on Plaintiff's answering machine:

18 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

19 29. Thereafter, Defendant sent Plaintiff a collection letter (Exhibit "5") which is
20 a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

21 30. A true and accurate copy of the collection letter from Defendant to Plaintiff
22 is attached hereto, marked Exhibit "5," and by this reference is incorporated herein.

23 31. The collection letter (Exhibit "5") is dated November 21, 2006.

24 32. On or about November 21, 2006, Defendant recorded the following automated
25 message on Plaintiff's answering machine:

26 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

27 33. On or about November 21, 2006, an employee of Defendant recorded the
28 following message on Plaintiff's answering machine:

1 Eveline, this is Lindsey. I need you to give me a call back please. My number is
2 866-239-6098. Thank you.

3 34. On or about November 22, 2006, an employee of Defendant recorded the
4 following message on Plaintiff's answering machine:

5 Hi. This message is for Eveline Rosenberry. My name is Amy. If you can could
6 call me toll free. It's 866-239-6098. Thank you.

7 35. Plaintiff received Defendant's collection letter (Exhibit "5") on or about
8 November 24, 2006.

9 36. On or about November 24, 2006, an employee of Defendant recorded the
10 following message on Plaintiff's answering machine:

11 Eveline, this is Valerie. If you can give me a call. My telephone number here is
12 866-239-6098.

13 37. On or about November 27, 2006, Defendant recorded the following automated
14 message on Plaintiff's answering machine:

15 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

16 38. On or about November 27, 2006, Defendant recorded the following automated
17 message on Plaintiff's answering machine:

18 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

19 39. On or about November 29, 2006, Defendant recorded the following automated
20 message on Plaintiff's answering machine:

21 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

22 40. On or about November 29, 2006, Defendant recorded the following automated
23 message on Plaintiff's answering machine:

24 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

25 41. On or about November 29, 2006, Defendant recorded the following automated
26 message on Plaintiff's answering machine:

27 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

28 42. On or about November 30, 2006, Defendant recorded the following automated

1 message on Plaintiff's answering machine:

2 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

3 43. On or about November 30, 2006, Defendant recorded the following automated
4 message on Plaintiff's answering machine:

5 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

6 44. On or about December 1, 2006, Plaintiff mailed a letter to Defendant which
7 stated: "please be advised that I dispute this debt and refuse to pay."

8 45. A true and accurate copy of Plaintiff's letter disputing the Shell debt and
9 refusing to pay the Shell debt is attached hereto, marked Exhibit "6," and by this reference is
10 incorporated herein.

11 46. On or about December 1, 2006, an employee of Defendant recorded the
12 following message on Plaintiff's answering machine:

13 Hi. This is Erica. If you would please return my call. The number is 866-239-6098.
14 Thanks.

15 47. On or about December 2, 2006, Defendant recorded the following automated
16 message on Plaintiff's answering machine:

17 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

18 48. On or about December 4, 2006, Defendant recorded the following automated
19 message on Plaintiff's answering machine:

20 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

21 49. Defendant received Plaintiff's letter disputing the Shell debt and refusing to
22 pay the Shell debt (Exhibit "6") on or about December 5, 2006.

23 50. A true and accurate copy of the USPS Tracking Report and Certified Mail
24 Return Receipt evidencing Defendant's receipt of Plaintiff's letter disputing the Shell debt and
25 refusing to pay the Shell debt (Exhibit "6") is attached hereto, marked Exhibit "7," and by this
26 reference is incorporated herein.

27 51. On or about December 12, 2006, Defendant recorded the following automated
28 message on Plaintiff's answering machine:

1 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

2 52. On or about December 13, 2006, Defendant recorded the following automated
3 message on Plaintiff's answering machine:

4 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

5 53. On or about December 14, 2006, Defendant recorded the following automated
6 message on Plaintiff's answering machine:

7 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

8 54. On or about December 18, 2006, Defendant recorded the following automated
9 message on Plaintiff's answering machine:

10 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

11 55. On or about December 19, 2006, Defendant recorded the following automated
12 message on Plaintiff's answering machine:

13 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

14 56. On or about December 20, 2006, an employee of Defendant recorded the
15 following message on Plaintiff's answering machine:

16 Eveline, this is Jaime Nixon. Please give me a call back. My number is 866-239-
17 6098. Thank you.

18 57. On or about December 21, 2006, Defendant recorded the following automated
19 message on Plaintiff's answering machine:

20 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

21 58. On or about December 21, 2006, Defendant recorded the following automated
22 message on Plaintiff's answering machine:

23 098. Again that number is 1-866-239-6098. Please return my call. Thank you.

24 59. On or about December 26, 2006, Defendant recorded the following automated
25 message on Plaintiff's answering machine:

26 Please hold a moment while this call is being connected.

27 60. On or about December 27, 2006, an employee of Defendant recorded the
28 following message on Plaintiff's answering machine:

1 Eveline, this is Lindsey. I need a call back please at 866-239-6098. Thank you.

2 61. On or about December 28, 2006, an employee of Defendant recorded the
3 following message on Plaintiff's answering machine:

4 Hi, this message is for Eveline. If you could call me toll free - 866-239-6098. Thank
5 you.

6 62. Thereafter, Defendant sent Plaintiff a collection letter (Exhibit "8") which is
7 a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

8 63. A true and accurate copy of the collection letter from Defendant to Plaintiff
9 is attached hereto, marked Exhibit "8," and by this reference is incorporated herein.

10 64. The collection letter (Exhibit "8") is dated January 16, 2007.

11 65. Plaintiff received Defendant's collection letter (Exhibit "8") on or about
12 January 19, 2007.

13 66. Each of Defendant's answering machine messages was a "communication"
14 in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

15 67. Defendant failed to disclose Defendant's identity and the nature of
16 Defendant's business each of the answering machine messages, in violation of 15 U.S.C. § 1692d(6)
17 and Cal. Civil Code § 1788.11(b). See *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d
18 1104, 1112 & 1118 (C.D. Cal. 2005).

19 68. Defendant failed to disclose that the answering machine messages were
20 communications from a debt collector, in violation of 15 U.S.C. § 1692e(11). See *Hosseinzadeh*
21 *v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d 1104, 1116 (C.D. Cal. 2005); *Foti v. NCO Financial*
22 *Systems, Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

23 69. At approximately 6:33 p.m. on March 30, 2007, Defendant placed a telephone
24 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering
25 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
26 debts from Plaintiff.

27 70. At approximately 9:33 a.m. on March 31, 2007, Defendant placed a telephone
28 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering

1 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
2 debts from Plaintiff.

3 71. At approximately 11:18 a.m. on April 12, 2007, Defendant placed a telephone
4 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering
5 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
6 debts from Plaintiff.

7 72. At approximately 7:55 p.m. on April 12, 2007, Defendant placed a telephone
8 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering
9 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
10 debts from Plaintiff.

11 73. At approximately 4:22 p.m. on April 16, 2007, Defendant placed a telephone
12 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering
13 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
14 debts from Plaintiff.

15 74. At approximately 7:23 p.m. on April 16, 2007, Defendant placed a telephone
16 call to the Plaintiff's telephone number, but did not leave a message on Plaintiff's answering
17 machine. Said telephone call was placed by Defendant for the purpose of collecting the alleged
18 debts from Plaintiff.

19 75. Defendant caused Plaintiff's telephone to ring repeatedly or continuously with
20 the intent to annoy, abuse or harass Plaintiff.

21 76. Defendant caused Plaintiff's telephone to ring with such frequency as to be
22 unreasonable and constitute harassment to Plaintiff under the circumstances.

23 77. As a consequence of Defendant's collection activities and communications,
24 Plaintiff has suffered economic loss, loss of self-esteem and peace of mind, and has suffered
25 substantial emotional distress, humiliation and embarrassment.

26 78. As a senior citizen subjected to Defendant's abusive, deceptive and unfair
27 collection practices, Plaintiff is entitled to treble damages pursuant to Cal. Civil Code § 3345.

28 ///

VII. CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

79. Plaintiff brings the first claim for relief against Defendant under the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

80. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 78 above.

81. Plaintiff is a “consumer” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

82. Defendant, CBE, is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

83. The financial obligations allegedly owed by Plaintiff are each a “debt” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

84. Defendant’s answering machine messages described above violate the FDCPA. The violations include, but are not limited to, the following:

- a. Defendant caused Plaintiff’s telephone to ring repeatedly or continuously with the intent to annoy, abuse or harass Plaintiff, in violation of 15 U.S.C. § 1692d(5);
- b. Defendant caused Plaintiff’s telephone to ring with such frequency as to be unreasonable and constitute harassment to Plaintiff under the circumstances, in violation of 15 U.S.C. § 1692d(5);
- c. Defendant failed to disclose Defendant’s identity and the nature of Defendant’s business, in violation of 15 U.S.C. § 1692d(6); and
- d. Defendant failed to disclose that the communications were from a debt collector, in violation of 15 U.S.C. § 1692e(11).

85. Defendant has further violated the FDCPA in the following respects:

- a. Defendant continued to communicate with Plaintiff in an attempt to collect the alleged debts after receiving a written notification that Plaintiff refused to pay the debts being collected, in violation of 15

U.S.C. § 1692c(c);

b. Defendant attempted to collect the alleged debts by taking actions that could not lawfully be taken, in violation of 15 U.S.C. § 1692e(5); and

c. Defendant continued its collection efforts against Plaintiff after receiving a written notification within the thirty-day validation period from Plaintiff disputing the debt being collected in its entirety without first obtaining a verification of the debt and mailing a copy of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b).

86. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

87. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to an award of actual damages, statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

88. Plaintiff brings the second claim for relief against Defendant under the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788-1788.33.

89. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 87 above.

90. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(h).

91. Defendant, CBE, is a "debt collector" as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(c).

92. The financial obligations allegedly owed by Plaintiff are each a "consumer debt" as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

93. Defendant's answering machine messages described above violate the RFDCPA. The violations include, but are not limited to, the following:

a. Defendant caused Plaintiff's telephone to ring repeatedly or

continuously with the intent to annoy, abuse or harass Plaintiff, in violation of 15 U.S.C. § 1692d(5), as incorporated by Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(d);

b. Defendant caused Plaintiff's telephone to ring with such frequency as to be unreasonable and constitute harassment to Plaintiff under the circumstances, in violation of 15 U.S.C. § 1692d(5), as incorporated by Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(e);

c. Defendant failed to disclose Defendant's identity and the nature of Defendant's business, in violation of 15 U.S.C. § 1692d(6), as incorporated by Cal. Civil Code § 1788.17 and Cal. Civil Code § 1788.11(b);

d. Defendant failed to disclose that the communications were from a debt collector, in violation of 15 U.S.C. § 1692e(11), as incorporated by Cal. Civil Code § 1788.17.

94. Defendant has further violated the RFDCPA in the following respects:

a. Defendant continued to communicate with Plaintiff in an attempt to collect the alleged debts after receiving a written notification that Plaintiff refused to pay the debts being collected, in violation of 15 U.S.C. § 1692c(c), as incorporated by Cal. Civil Code § 1788.17;

b. Defendant attempted to collect the alleged debts by taking actions that could not lawfully be taken, in violation of 15 U.S.C. § 1692e(5), as incorporated by Cal. Civil Code § 1788.17; and

c. Defendant continued its collection efforts against Plaintiff after receiving a written notification within the thirty-day validation period from Plaintiff disputing the debt being collected in its entirety without first obtaining a verification of the debt and mailing a copy of such verification to the Plaintiff, in violation of 15 U.S.C. § 1692g(b), as incorporated by Cal. Civil Code § 1788.17.

95. Defendant's acts as described above were done willfully and knowingly with the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of Cal. Civil Code § 1788.30(b).

96. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to an award of her actual damages in an amount to be determined at trial, pursuant to Cal. Civil Code § 1788.30(a).

97. As a result of Defendant's willful and knowing violations of the RFDCPA, Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000), pursuant to Cal. Civil Code § 1788.30(b).

98. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to an award of statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17.

99. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to an award of her reasonable attorney's fees and costs pursuant to Cal. Civil Code § 1788.30(c) and 15 U.S.C. § 1692k(a)(3), as incorporated by Cal. Civil Code § 1788.17.

100. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies that the Plaintiff may have under any other provision of law.

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

101. Plaintiff brings the third claim for relief against Defendant for common law Invasion of Privacy by Intrusion Upon Seclusion.

102. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 100 above.

103. Plaintiff had a reasonable expectation of privacy in her solitude, seclusion and private concerns or affairs while in her home.

104. Defendant intentionally intruded into Plaintiff's home by using an automated device which repeatedly caused Plaintiff's telephone to ring.

105. These intrusions and invasions by Defendant occurred in a way that would

1 be highly offensive to a reasonable person in Plaintiff's position.

2 106. Defendant intentionally caused harm to Plaintiff's emotional well being by
3 engaging in highly offensive conduct in the course of collecting the alleged debt thereby invading
4 and intruding upon Plaintiff's right to privacy, solitude and seclusion.

5 107. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

6 108. Plaintiff has been harmed by Defendant's invasion of privacy and has been
7 damaged as a result of the invasion of privacy by Defendant, including but not limited to: substantial
8 emotional distress, loss of sleep, loss of enjoyment of life, humiliation, stress, crying, lack of
9 concentration, anxiety and embarrassment by such invasions of her privacy by Defendant.

10 109. As a result of such invasions of privacy, Plaintiff is entitled to actual damages
11 and punitive damages in an amount to be determined at trial.

12 **NEGLIGENT COLLECTION**

13 110. Plaintiff brings the fourth claim for relief against Defendant for common law
14 negligence.

15 111. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
16 through 109 above.

17 112. Defendant had a legal duty to conform its collection activities to the standard
18 of conduct set forth in the FDCPA and RFDCPA to protect consumers like the Plaintiff.

19 113. Defendant failed to conform its collection activities to this standard of
20 conduct.

21 114. Defendant's failure to conform its collection activities to the standards set
22 forth in the FDCPA and RFDCPA was the proximate or legal cause of the resulting injuries to
23 Plaintiff.

24 115. Plaintiff was damaged by Defendant's unlawful collection activities.

25 116. As a result of such negligent collection, Plaintiff is entitled to actual damages
26 and punitive damages in an amount to be determined at trial.

27 **TORT-IN-SE**

28 117. Plaintiff brings the fifth claim for relief against Defendant for common law

1 tort-in-se.

2 118. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
3 through 116 above.

4 119. Defendant violated a statutory duty to Plaintiff and is thereby liable under the
5 doctrine of “tort-in-se.”

6 120. Defendant engaged in an unlawful course of conduct in violation of the
7 FDCPA and RFDCPA.

8 121. Plaintiff was damaged by Defendant’s breach of its statutory duties.

9 122. As a result of such statutory breach, Plaintiff is entitled to actual damages and
10 punitive damages in an amount to be determined at trial.

11 **PUNITIVE DAMAGES**

12 123. Plaintiff is informed and believes, and thereon alleges that Defendant’s
13 conduct was fraudulent, malicious, despicable and oppressive and was intended to harm Plaintiff.

14 124. Plaintiff is informed and believes, and thereon alleges that an officer, director
15 or managing agent of the Defendant authorized, approved and ratified Defendant’s wrongful and
16 unlawful acts described herein.

17 125. Defendant is liable for reasonable punitive damages in an amount sufficient
18 to punish and educate Defendant and to educate other businesses engaged in similar activities that
19 the courts and juries of California will not tolerate such conduct in California.

20 **VIII. REQUEST FOR RELIEF**

21 Plaintiff requests that this Court:

- 22 a. Assume jurisdiction in this proceeding;
- 23 b. Declare that Defendant’s answering machine messages violated the Fair Debt
24 Collection Practices Act, 15 U.S.C. §§ 1692d(5), 1692d(6) and 1692e(11);
- 25 c. Declare that Defendant’s answering machine messages violated the Rosenthal Fair
26 Debt Collection Practices Act, Cal. Civil Code §§ 1788.11(b), 1788.11(d),
27 1788.11(e) and 1788.17;
- 28 d. Declare that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §§

- 1 1692c(c), 1692e(5) and 1692g(b);
- 2 e. Declare that Defendant violated the Rosenthal Fair Debt Collection Practices Act,
- 3 Cal. Civil Code § 1788.17;
- 4 f. Award Plaintiff her actual damages in an amount to be determined at trial, pursuant
- 5 to 15 U.S.C. § 1692k(a)(1) and Cal. Civil Code § 1788.30(a);
- 6 g. Award Plaintiff statutory damages in an amount not exceeding \$1,000, pursuant to
- 7 15 U.S.C. § 1692k(a)(2)(A);
- 8 h. Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than
- 9 \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- 10 i. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to
- 11 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code §1788.17;
- 12 j. Award Plaintiff her actual damages and punitive damages in an amount to be
- 13 determined at trial for Defendant's invasions of Plaintiff's privacy;
- 14 k. Award Plaintiff her actual damages and punitive damages in an amount to be
- 15 determined at trial for Defendant's negligent collection practices;
- 16 l. Award Plaintiff her actual damages and punitive damages in an amount to be
- 17 determined at trial under the doctrine of "tort-in-se."
- 18 m. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15
- 19 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c);
- 20 n. Award Plaintiff treble damages pursuant to Cal. Civil Code § 3345; and
- 21 o. Award Plaintiff such other and further relief as may be just and proper.

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23 CONSUMER LAW CENTER, INC.

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25 By: /s/ Fred W. Schwinn
 26 Fred W. Schwinn, Esq.
 27 Attorney for Plaintiff
 28 EVELINE HENRIETTE
 ROSENBERY

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, EVELINE HENRIETTE ROSENBERRY, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.